UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DENNIS PAUL NEAL]	
Plaintiff,]	
]	
v.]	No. 3:12-0905
]	Judge Campbell
R. BARRY GEARON, JR.]	
Defendant.	1	

MEMORANDUM

The plaintiff, proceeding pro se, is an inmate at the Davidson County Criminal Justice Center in Nashville. He brings this action pursuant to 42 U.S.C. § 1983 against R. Barry Gearon, Jr., a Nashville attorney, seeking damages.

The defendant was appointed to represent the plaintiff in a criminal matter. The plaintiff is unhappy with the defendant's representation and claims that he remains incarcerated due to the defendant's "negligence, incompetence and unethical practice".

To establish a claim for § 1983 relief, the plaintiff must plead and prove that the defendant, while acting under color of state law, deprived him of a right or privilege guaranteed by the Constitution or laws of the United States. <u>Parratt v. Taylor</u>, 451 U.S. 527, 535 (1981).

It is well settled that attorneys, even those appointed by the courts, do not act "under color of state law" within the meaning of

§ 1983 when representing a client. <u>Polk County v. Dodson</u>, 454 U.S. 312 (1981); <u>Mulliqan v. Schlachter</u>, 389 F.2d 231, 233 (6th Cir.1968). Thus, plaintiff's claim that his attorney has been ineffective is not actionable under § 1983.

When a prisoner plaintiff proceeding as a pauper, as is the case here, has failed to state a claim upon which relief can be granted, the Court is obliged to dismiss the instant action sua sponte. 28 U.S.C. § 1915(e)(2).

An appropriate order will be entered.

Todd Campbell

United States District Judge